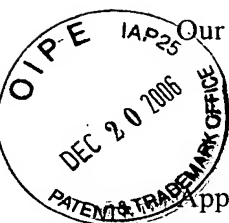


Zong J



Our Reference: GP-304345

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants: HITAN S. KAMDAR, et al.
Serial No.: 10/767,237
Filed: January 28, 2004
Confirmation No.: 4779
Examiner/Art Unit: Marisol Figueroa/2617
For: METHOD AND SYSTEM FOR MANAGING
WIRELESS NETWORK INFORMATION
COLLECTION UTILIZING A TELEMATICS
UNIT

CERTIFICATE OF MAILING AND TRANSMITTAL LETTER

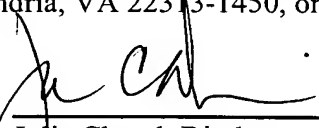
Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Transmitted with this document is: 2 Postcards; a Response to Non-Compliant Appeal Brief; and a revised Appeal Brief in the above-identified application.

- X No additional fees required.
X Please charge any deficiency or credit any excess in the enclosed fees to Deposit Account Number 07-0960.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, Mail Stop Appeal Brief-Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on December 18, 2006.



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Our Reference: GP-304345

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellants:	HITAN S. KAMDAR, et al.
Serial No.:	10/767,237
Filed:	January 28, 2004
Confirmation No.:	4779
Examiner/Art Unit:	Marisol Figueroa/2617
For:	METHOD AND SYSTEM FOR MANAGING WIRELESS NETWORK INFORMATION COLLECTION UTILIZING A TELEMATICS UNIT

RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Notification of Non-Compliant Appeal Brief dated November 17, 2006, please consider Appellant’s revised appeal brief filed concurrently herewith.

Further and favorable consideration is requested.

Respectfully submitted,

DIERKER & ASSOCIATES, P.C.

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3331 West Big Beaver Rd.
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Troy, Michigan 48084-2813

Dated: December 18, 2006



Our Reference: GP-304345

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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APPEAL BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is a revised Appeal Brief filed in response to the Examiner's rejection of claims 1-20. This Appeal Brief is intended to replace the previous revised Appeal Brief filed on August 24, 2006.

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I. REAL PARTY IN INTEREST

The real party in interest is Assignee General Motors Corporation, a corporation having an office and a place of business at 300 Renaissance Center, Detroit, Michigan, 48265-3000.

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II. RELATED APPEALS AND INTERFERENCES

Appellants and the undersigned attorneys are not aware of any appeals or any interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-20 are the claims on appeal. *See*, Appendix.

Claims 1-8, 10-17 and 19-20 were rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent Application Publication Number 2003/0208522 to McDonnell ("*McDonnell*") in view of United States Patent Application Publication Number 2003/0139179 to Fuchs ("*Fuchs*").

Claims 9 and 18 were rejected under 35 U.S.C. §103(a) as being unpatentable over *McDonnell* in view of *Fuchs*, and further in view of United States Patent Number 6,006,091 to Lupien ("*Lupien*").

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IV. STATUS OF AMENDMENTS

In response to the Final Office Action of March 14, 2006, no amendment pursuant to 37 C.F.R. 1.116 was filed.

V. SUMMARY OF CLAIMED SUBJECT MATTER

In this summary of claimed subject matter, all citations are to the specification of United States Patent Application 10/767,237. Further, all citations are illustrative only and support for the cited element may be found elsewhere in the specification.

Independent claim 1:

One aspect of the invention provides a method for wireless network data collection utilizing a telematics unit 120 within a mobile vehicle communication system 100. The method includes detecting 320, at a vehicle system module 290, at least one wireless short-distance communication network identification signal, the vehicle system module including software and hardware components for operating, controlling or monitoring one or more vehicle systems, and the vehicle system module coupled to a vehicle communication bus 122, 212. The method further includes generating 330 wireless network information based on the at least one detected wireless network identification signals and communicating 340 the generated wireless network information to a service provider. See, e.g., page 15, line 1 through page 16, line 20.

Dependent claim 9:

In one embodiment, the invention further includes receiving a wireless network information request, and processing the wireless network information request to identify the wireless network information upload trigger 234 (*see, inter alia*, p.15-16).

Independent claim 11:

Another aspect of the invention provides a computer readable medium for operating a telematics unit within a mobile vehicle for wireless network data collection utilizing a telematics unit 120 within a mobile vehicle communication system 100. The medium includes computer readable code for detecting 320, at a vehicle system module 290, at least one wireless short-distance communication network identification signal, the vehicle system module including software and hardware components for operating, controlling or monitoring one or more vehicle systems, and the vehicle system module coupled to a vehicle communication bus 122, 212. The medium further includes computer readable code for generating 330 wireless network information based on the at least one detected wireless network identification signals and

computer readable code for communicating 340 the generated wireless network information to a service provider. See, e.g., page 15, line 1 through page 16, line 20.

Independent claim 20:

Yet another aspect of the invention provides a system for operating a telematics unit within a mobile vehicle for wireless network data collection utilizing a telematics unit 120 within a mobile vehicle communication system 100. The system includes means for detecting 320, at a vehicle system module 290, at least one wireless short-distance communication network identification signal, the vehicle system module including software and hardware components for operating, controlling or monitoring one or more vehicle systems, and the vehicle system module coupled to a vehicle communication bus 122, 212. The system further includes means for generating 330 wireless network information based on the at least one detected wireless network identification signals and means for communicating 340 the generated wireless network information to a service provider. See, e.g., page 15, line 1 through page 16, line 20.

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VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-8, 10-17, and 19-20 were rejected under 35 U.S.C. §103(a) as being unpatentable over *McDonnell* in view of *Fuchs*.

Claims 9 and 18 were rejected under 35 U.S.C. §103(a) as being unpatentable over *McDonnell* in view of *Fuchs*, and further in view of *Lupien*.

VII. ARGUMENTS

A. The 35 U.S.C. §103(a) rejections over *McDonnell* in view of *Fuchs*

The rejection of claims 1-8, 10-17 and 19-20 under 35 U.S.C. §103(a) as being unpatentable over *McDonnell* in view of *Fuchs* is traversed. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference(s) or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See*, MPEP §2143.

At a minimum, *McDonnell* fails to teach or suggest "detecting, at a vehicle system module, at least one wireless short-distance communication network identification signal, the vehicle system module including software and hardware components for operating, controlling or monitoring one or more vehicle systems, and the vehicle system module coupled to a vehicle communication bus" as claimed in claims 1, 11 and 20. The Examiner correctly recognizes this failure, and instead relies on *Fuchs* to teach such a claim limitation.

Regardless of the veracity of the Examiner's recitation of the teachings of *Fuchs*, an obviousness rejection must be predicated on a proper motivation to combine. There can be no motivation to combine a method for gathering information from short-range wireless portals and an integrated personal communications system and method. The rationale to modify or combine the prior art may be expressly or impliedly contained in the prior art *or* it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. MPEP §2144, *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). *See also In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) (setting forth the test for implicit teachings); *In re Eli Lilly & Co.*, 902 F.2d 943, 14 USPQ2d 1741 (Fed. Cir. 1990) (discussion of reliance on legal precedent); *In re Nilssen*, 851 F.2d 1401, 1403, 7 USPQ2d 1500, 1502 (Fed. Cir. 1988) (references do not have to explicitly suggest combining teachings); *Ex parte Clapp*, 227 USPQ 972 (Bd. Pat. App. & Inter. 1985) (examiner must present convincing line of reasoning supporting rejection); and *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993) (reliance on logic and sound scientific reasoning). The Examiner

properly does not cite to any express or implied teachings in either *McDonnell* or *Fuchs*, as neither reference, alone or in combination, provides any such teaching. Therefore, the Examiner must be attempting to rely on either knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. The Examiner makes no citation to any established scientific principles, or precedent established by prior case law, and therefore can *only* be relying on knowledge generally available to one of ordinary skill in the art.

However, the Examiner provides no evidence of the ordinary skill in the art. In a case such as this, where the Examiner is improperly attempting to combine disparate references, the Examiner's omission of any details regarding the level of skill of one in the art is especially telling. The mere fact that references *can* be combined is not sufficient to establish obviousness under 35 U.S.C. §103(a). *In re Mills*, 916 F.2d 680 (Fed. Cir. 1990), MPEP §2143.01.

The cited motivation - "to integrate the user's wireless device with a telematics system for detecting and gathering information from beacons while a user is in a vehicle, because a vehicle will allow the travel across a wide area for gathering information in a short amount of time, and using the same system for in-vehicle and personal communications" (p. 3 of the March 14, 2006 office action) - fails to find support in the references. The citation to ¶¶1-3 fails. Nowhere in ¶¶1-3 does *Fuchs* teach or suggest the desirability of combining a system to detect and gather information from beacons with using the same system for personal communications. In addition, *McDonnell* does not teach or suggest the desirability of combining a system to detect and gather information from beacons with using the same system for personal communications. Additionally, *Fuchs* does not teach or suggest the desirability of using a telematics device to detect and gather information from beacons.

This is particularly true in light of *McDonnell*'s failure to denounce its teachings as less than perfect, and in further light of *Fuchs*' failure to pronounce its teachings as optimal. Neither *McDonnell* nor *Fuchs* teaches the desirability of "gathering information in a short amount of time." Rather, *McDonnell* simply teaches the desirability of securing information by arranging for users to be rewarded for successful entries in a database service system. See, ¶32, *McDonnell*.

Therefore, *McDonnell* in view of *Fuchs* cannot render these claims unpatentable.

B. The 35 U.S.C. §103(a) rejections over *McDonnell* in view of *Fuchs*, and further in view of *Lupien*

The 35 U.S.C. §103(a) rejection of claims 9 and 18 as being unpatentable over *McDonnell* in view of *Fuchs* in further view of *Lupien* is traversed.

Claims 9 and 18 each require both detecting a wireless network information upload trigger, and initiating a wireless network information transmission to the service provider responsive to the detected wireless network information upload trigger. At most, *McDonnell* discloses "collect[ing] information over a period from a number of portals and then upload it all at once to the database system, either via PLMN 10 or another network, such as the internet." See, ¶38 of *McDonnell*. *McDonnell* does not teach any trigger, much less detecting a wireless network information trigger. Furthermore, *Fuchs* makes no such teachings.

Instead, the Examiner relies upon *Lupien* for such a teaching. However, there is no motivation to combine *Lupien* with the teachings of either *McDonnell* or *Fuchs*. The mere fact that references can be combined does not render the combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680 (Fed. Cir.1990), MPEP §2143.01. Merely alleging that each reference teaches a salutary teaching fails to satisfy the Examiner's burden.

The motivation to combine references can only come from the references, be reasoned from common knowledge in the art, or from legal precedent. "The level of skill in the art cannot be relied upon to provide the suggestion to combine references." MPEP §2143.01. In this case, the Examiner makes no showing that the motivation to combine the references comes from the references or that the motivation comes from legal precedent. Thus, the Examiner appears to be relying on "common knowledge in the art" - however, the Examiner makes no showing of what knowledge is common in the art, such as with official notice or an Examiner's Affidavit. As the motivation cannot come from the level of skill in the art, the Examiner needs to show facts, not allegations, to support that it is common knowledge in the art to combine these references. In view of the Examiner's failure to make such a showing, the 35 U.S.C. §103(a) rejection must fall.

In fact, none of the three references teach or suggest the motivation suggested by the Examiner - defining a time at which information contained in the mobile terminal is needed by the network (p. 9 of the March 14, 2006 office action). At most, *McDonnell* teaches or suggests that the information can either be uploaded immediately or at a later time, but not defining the time, or receiving a wireless network information request and processing the wireless network

information request to identify the wireless network information upload trigger as claimed. *See, McDonnell*, ¶ 38.

Furthermore, claims 9 and 18 depend from claims 8 and 11 and are therefore patentable for at least the same reasons as claims 8 and 11.

Therefore, *McDonnell* in view of *Fuchs*, and further in view of *Lupien* cannot render these claims unpatentable.

Appellants request withdrawal of the rejections to claims 1, 11 and 20, as well as claims 2-8, 10 and 12-19, depending directly or indirectly from claims 1 or 11.

Withdrawal of the rejections to claims 1-20 is requested.

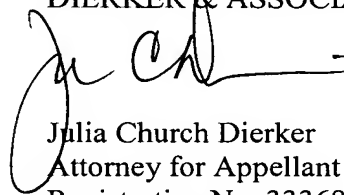
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SUMMARY

The Appellants respectfully submit that claims 1-20 herein fully satisfy the requirements of 35 U.S.C. §§102, 103 and 112. In view of the foregoing, favorable consideration and passage to issue of the present application is respectfully requested. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

DIERKER & ASSOCIATES, P.C.

A handwritten signature in black ink, appearing to read 'J. Church Dierker', is written over the printed name.

Julia Church Dierker
Attorney for Appellant
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Dated: December 18, 2006
JCD/AMS



VIII. CLAIMS APPENDIX

1. (Previously presented) A method for wireless network data collection utilizing a telematics unit within a mobile vehicle communication system, the method comprising:
 - detecting, at a vehicle system module, at least one wireless short-distance communication network identification signal, the vehicle system module including software and hardware components for operating, controlling or monitoring one or more vehicle systems, and the vehicle system module coupled to a vehicle communication bus;
 - generating wireless network information based on the at least one detected wireless network identification signals; and
 - communicating the generated wireless network information to a service provider.
2. (Original) The method of claim 1, wherein detecting the at least one wireless short-distance communication network identification signal comprises:
 - receiving at least one wireless short-distance communication network identification signal;
 - determining a unique device identifier associated with each received wireless short-distance communication network identification signal; and
 - storing the determined unique device identifier.
3. (Original) The method of claim 1, wherein the wireless short-distance communication network identification signal includes information selected from the group consisting of: an

internet protocol address, GPS location, a location identification tag, points of interest, venue capacity, venue size, and category.

4. (Original) The method of claim 1, wherein generating the wireless network information comprises:

associating a GPS coordinate with the detected wireless short-distance communication network identification signal; and

storing the wireless short-distance communication network identification signal and the associated GPS coordinate.

5. (Original) The method of claim 4, wherein the GPS coordinate is based on the location of the telematics unit at the time of reception.

6. (Original) The method of claim 4, wherein the GPS coordinate is included within the at least one wireless short-distance communication network identification signal.

7. (Original) The method of claim 1, wherein the at least one wireless short-distance communication network identification signal is selected from the group consisting of: radio frequency identification data, a short message service signal, an IEEE 802.11 standard compliant signal, and a Bluetooth compliant signal.

8. (Original) The method of claim 1, wherein communicating the generated wireless network information to a service provider comprises:

detecting a wireless network information upload trigger; and

initiating a wireless network information transmission to the service provider responsive to the detected wireless network information upload trigger.

9. (Original) The method of claim 8, wherein detecting the wireless network information upload trigger comprises:

receiving a wireless network information request; and

processing the wireless network information request to identify the wireless network information upload trigger.

10. (Original) The method of claim 8, further comprising:

transmitting the wireless network information to a service provider.

11. (Previously presented) A computer readable medium for operating a telematics unit within a mobile vehicle, comprising:

computer readable code for detecting, at a vehicle system module, at least one wireless short-distance communication network identification signal, the vehicle system module including software and hardware components for operating, controlling or monitoring one or more vehicle systems, and the vehicle system module coupled to a vehicle communication bus;

computer readable code for generating wireless network information based on the at least one detected wireless network identification signals; and

computer readable code for communicating the generated wireless network information to a service provider.

12. (Original) The computer readable medium of claim 11, wherein the computer readable code for detecting at least one wireless short-distance communication network identification signal comprises:

computer readable code for processing the received at least one wireless short-distance communication network identification signal;

computer readable code for determining a unique device identifier associated with each received wireless short-distance communication network identification signal; and

computer readable code for storing the determined unique device identifier.

13. (Original) The computer readable medium of claim 11, wherein the computer readable code for generating wireless network information based on the at least one detected wireless network identification signals comprises:

computer readable code for associating a GPS coordinate with the detected wireless short-distance communication network identification signal; and

computer readable code for storing the wireless short-distance communication network identification signal and the associated GPS coordinate.

14. (Original) The computer readable medium of claim 11, wherein the GPS coordinate is based on the location of the telematics unit at the time of reception.

15. (Original) The computer readable medium of claim 11, wherein the GPS coordinate is included within the at least one wireless short-distance communication network identification signal.

16. (Original) The computer readable medium of claim 11, wherein the at least one wireless short-distance communication network identification signal is selected from the group consisting of: radio frequency identification data, a short message service signal, an IEEE 802.11 standard compliant signal, and a Bluetooth compliant signal.

17. (Original) The computer readable medium of claim 11, wherein the computer readable code for communicating the generated wireless network information to a service provider comprises:

computer readable code for detecting a wireless network information upload trigger;
and

computer readable code for initiating a wireless network information transmission to the service provider responsive to the detected wireless network information upload trigger.

18. (Original) The computer readable medium of claim 11, wherein the computer readable code for detecting the wireless network information upload trigger comprises:

computer readable code for processing a received wireless network information request to identify the wireless network information upload trigger.

19. (Original) The computer readable medium of claim 11, further comprising:

computer readable code for transmitting the wireless network information to a service provider.

20. (Previously presented) A system for operating a telematics unit within a mobile vehicle, the system comprising:

means for detecting, at a vehicle system module, at least one wireless short-distance communication network identification signal, the vehicle system module including software and hardware components for operating, controlling or monitoring one or more vehicle systems, and the vehicle system module coupled to a vehicle communication bus;

means for generating wireless network information based on the at least one detected wireless network identification signals; and

means for communicating the generated wireless network information to a service provider.

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IX. EVIDENCE APPENDIX

None.

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X. RELATED PROCEEDINGS APPENDIX

None.